

Planning Commission Meeting
February 9, 2012
Verbatim Excerpt

ZONING ORDINANCE AMENDMENT (INDEPENDENT LIVING FOR LOW-INCOME RESIDENTS)

During Commission Matters
(Public Hearing held on January 26, 2012)

Chairman Murphy: Mr. Hart.

Commissioner Hart: Mr. Chairman, on January 26 – this is the motion on the Zoning Ordinance Amendment – on January 26, the Commission held a public hearing on a Zoning Ordinance Amendment regarding independent living facilities for low-income residents and revisions to the definitions of dwelling unit and independent living facility. We deferred decision until tonight to consider several comments and questions. I am now ready to move forward and will have two motions. First, let me thank the speaker who came out to the public hearing and the citizens who submitted written comments and questions. Let me also thank staff, particularly Donna Pesto as well as Michelle O'Hare, and Laura Gori in the County Attorney's Office, as well as the Zoning Administrator, Eileen McLane, for their fine work on this case. Reducing homelessness in Fairfax County has been a priority of the Board for some time. Creating an option for independent living facilities for low-income residents may be one way of achieving that goal, but implementing that use in a legally permissible way has been more difficult than we had hoped. For a number of months, staff has refined the original proposal for residential studios into what we have before us tonight. With the changes over the past year, the proposal has garnered some community and industry support. In this iteration, the Amendment has staff's favorable recommendation, although there is some opposition in the community regarding the absence of a height restriction in residential districts, which would appear to allow a structure of 50 feet – at least in the short term – taller than the limit of 35 feet for houses. But a 50-foot structure is something we still can avoid, on a case-by-case basis, without having to re-advertise. Even if we add an additional standard for the new use with a height limit of 35 feet, the Board could always modify it. In the absence of an additional standard, however, the Commission and Board still can evaluate whether the building was consistent with the character of the neighborhood and therefore be able to address height concerns on a case-by-case basis. The Zoning Administrator also has suggested that even if we want to add a height restriction to the use, we should proceed ahead with the Ordinance now, but can recommend by follow-on motion another amendment shortly to add a height restriction. Staff also suggests that we not try to add temporarily a height restriction to the low-income type use where none exists for other similar independent living facilities, even if we were within the scope of the advertising as there may be legal problems with creating a distinction. I agree with staff's analysis and believe we can move forward tonight. Staff also is ready to roll on a follow-up Amendment if the Board so directs. A subsidiary issue with the Amendment is the revision to the definition of dwelling unit. Multiple kitchens in single-family residences have been problematic for enforcement. Ambiguity in the Ordinance currently encourages some users to claim in response to violation notices that by unplugging a microwave or other appliance, the cooking facilities are not permanent and therefore the alleged dwelling unit is not a violation. Questions have been raised, however, regarding the implications

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of deleting the word “permanent” from the definition of dwelling unit across the board because many homes have wet bars, microwaves, toaster ovens, or other devices outside the kitchen. This remains a complicated question. I believe, however, that staff has satisfactorily justified the deletion of the word “permanent” as it relates to cooking facilities. The Zoning Administrator, staff, the Board of Zoning Appeals, and the Courts still will look at the overall circumstances to evaluate the total package as a whole and whether it is intended to function as a separate dwelling unit. We recognize that residents may have microwaves in the basement or other devices for cooking in a home, which do not rise to the level of a second dwelling unit. With this Amendment, the technicality of whether the cooking appliance is permanent is removed from the equation. Questions also were raised at the public hearing regarding the effect of potential spouses and children for live-in caregivers or resident care providers with this type of use. Staff has responded on that issue with the assistance of the County Attorney’s Office and a copy of the analysis was forwarded to the Commission last week. In a nutshell, there are a number of pertinent federal regulations and exemptions which are extremely complicated. Different factual scenarios related to the type of rental agreement or employment arrangements may yield different answers. Staff recommends we not attempt to paraphrase or spell out in our Ordinance what we think is allowed. We cannot control what the existing Fair Housing regulations require at the local level and we will have to abide by those rules no matter what uses we may allow in our Zoning Ordinance. Overall, the Amendment has staff’s favorable recommendation, with which I concur. Therefore, Mr. Chairman – first, I MOVE THAT THE PLANNING COMMISSION FORWARD TO THE BOARD OF SUPERVISORS THE PROPOSED ZONING ORDINANCE AMENDMENT REGARDING INDEPENDENT LIVING FACILITIES FOR LOW-INCOME RESIDENTS AND MODIFICATIONS OF THE ADMINISTRATIVE PROVISIONS OF THE ADU PROGRAM AND TO THE DEFINITIONS OF “DWELLING UNIT” AND “INDEPENDENT LIVING FACILITY” WITH A RECOMMENDATION FOR ADOPTION, AS ADVERTISED AND FURTHER SET FORTH IN THE STAFF REPORT DATED DECEMBER 6, 2011.

Commissioner Hall: Second.

Chairman Murphy: Seconded by Ms. Hall. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it adopt the proposed Zoning Ordinance Amendment on independent living facilities for low-income residents and modifications of the administrative provisions of the Affordable Dwelling Unit Program and to the definitions of dwelling unit independent living facilities, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Mr. Hart.

Commissioner Hart: Secondly, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS AUTHORIZE STAFF TO PROCEED FORTHWITH WITH DRAFTING TEXT AND APPROPRIATE ADVERTISING TO AMEND THE ZONING ORDINANCE TO INCLUDE AN ADDITIONAL

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STANDARD FOR THE INDEPENDENT LIVING USE FOR LOW-INCOME RESIDENTS
APPROVED ABOVE AS WELL AS OTHER INDEPENDENT LIVING TYPE FACILITIES
TO INCLUDE A HEIGHT LIMITATION OF 35 FEET OR SUCH OTHER RANGE OF
HEIGHT LIMITATIONS AS THE BOARD DEEMS APPROPRIATE AT THE EARLIEST
FEASIBLE OPPORTUNITY.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of that motion? All those in
favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

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(The motions carried unanimously.)

JLC